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## PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Steven M. Bowman, *et al.*

Application No: 09/747,488

Filing Date: December 21, 2000

Entitled: **REINFORCED FOAM IMPLANTS  
WITH ENHANCED INTEGRITY  
FOR SOFT TISSUE REPAIR AND  
REGENERATION**

Atty. Docket No: 22956-67

Group Art Unit: 1615

Examiner: L. Di Nola  
BaronCertificate of Mailing (37 C.F.R. 1.8(a))

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2-22-02

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William C. Geary, III, Reg. No. 31,359  
Attorney for Applicant(s)RESPONSE TO RESTRICTION REQUIREMENTCommissioner for Patents  
Washington, DC 20231

Dear Sir:

This communication is in response to the Office Action dated January 25, 2002 requiring restriction of the above-referenced application to one of the following groups of claims:

- I. Claims 1-17, drawn to a tissue repair stimulating implant, classified in class 424, subclass 422;
- II. Claims 18-50, drawn to a method of treating a tissue injury, classified in class 604, subclass 46; and

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III. Claims 51-53, drawn to a method for making a tissue repair stimulating implant, classified in class 523, subclass 113.

Applicants elect, without traverse, the Group I claims (claims 1-17) drawn to a tissue repair stimulating implant. Applicants reserve the right to prosecute the non-elected claims in a divisional or other application.

In the Office Action dated January 25, 2002, the Examiner also required a restriction of the above-referenced application to one of the following species of the claimed biological component:

- a. Antibiotics, antimicrobial agents, analgesics and anti-inflammatory agents;
- b. Growth factors, hormones and cytokines;
- c. Proteins;
- d. Glycosaminoglycans;
- e. Immunosuppressants;
- f. Nucleic acids; and
- g. Cell types.

The Examiner improperly designated only claims 1 and 18 as generic claims. However, Applicants submit that claims 1-3 and 9-17 are generic. Applicants provisionally elect, with traverse, Species b, which is drawn to growth factors, hormones and cytokines. Generic claims 1-3 and 9-17 and species claims 5 and 6 read on the elected species.

Applicants respectfully traverse the requirement for election because the species listed by the Examiner are not "patentably distinct." As described at pages 15-17 of the specification


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for this application, the claimed biological components are effective to promote the healing and/or regeneration of tissue, either directly or indirectly. Thus, a search for biological components that promote tissue healing and/or regeneration would suffice for all of the biological components claimed by this application. Furthermore, several of the species identified by the Examiner are not patentably distinct because they cover the same, or equivalent, compounds. For example, it is known in the art that growth factors and cytokines are comprised of proteins, and some classes of antibiotics, antimicrobial agents, analgesics, anti-inflammatory agents, hormones, and immunosuppressants are also comprised of proteins. Thus, a search for "proteins" will suffice for these others. Likewise, it is well known that nucleic acids encode for proteins, and therefore, a search for one is sufficient for the other.

In light of the above remarks, Applicants respectfully request that the Examiner reconsider and withdraw the election requirement. The Examiner is urged to telephone the undersigned Attorney for Applicant(s) in the event that such communication is deemed to expedite prosecution of this matter.

Respectfully submitted,

Date: 2-22-02

  
\_\_\_\_\_  
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| Examiner L. Di Nola Baron | U.S. Patent and Trademark Office | (703) 746-3954 |           |

**COMMENTS:**

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Atty Docket No.: 022956-0067

Inventor: Steven M. Bowman, et al.

Application No.: 09/747,488-Conf. #8271

Filing Date: December 21, 2000

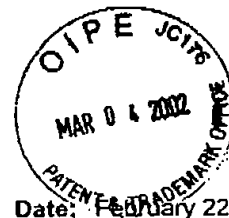
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REPAIR AND REGENERATION

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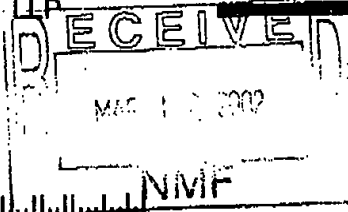
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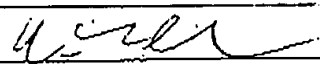
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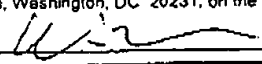


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|  | Filing Date            | December 21, 2000 |
|  | First Named Inventor   | Steven M. Bowman  |
|  | Group Art Unit         | 1615              |
|  | Examiner Name          | L. Di Nola Baron  |
| Total Number of Pages in This Submission   | Attorney Docket Number | 022956-0067       |

| ENCLOSURES (check all that apply)   |   |   |
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| Firm or Individual Name   | NUTTER MCLENNEN & FISH LLP<br>William C. Geary III  |   |
| Signature   |    |   |
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